

**UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

REPORT NUMBER 44 OF THE ELECTIONS COMMITTEE

March 27, 2006

To the University Affairs Board,
University of Toronto.

Your Committee reports that it met on March 27, 2006 in the Croft Chapter House, University College, as Elections Overseers, in accordance with Chapter III (10) of the *Election Guidelines, 2006*, with the following members present:

Professor Michael Marrus (In the Chair)
Mr. P.C. Choo
Dr. Shari Graham Fell
Mr. Stephen Smith

Secretariat:

Dr. Anthony Gray (Chief Returning Officer)
Ms Cristina Oke (Secretary)

In Attendance:

Mr. Paul Bretscher, complainant
Ms Saswati Deb, complainant
Ms Coralie D'Souza, respondent

Observers:

Ms Alyse Runyan
Ms Alex Szaflarska

The meeting was held in closed session.

In this report, all items are reported to the University Affairs Board for information.

Purpose of Meeting

The meeting was requested by Dr. Gray, the Chief Returning Officer (CRO), to hear four complaints. Two of the complaints were brought forward by Ms Saswati Deb, a successful candidate in the 2006 Governing Council election in the Full-time Undergraduate Student Constituency I. The other two complaints were brought forward by Mr. Paul Bretscher, President of the Students' Administrative Council. Two complaints concerned actions taken by Ms Coralie D'Souza (also a successful candidate in the 2006 Governing Council election in the Full-time Undergraduate Student Constituency I) during the elections campaign which, it was alleged, violated the rules of campaigning as set out in the *Election Guidelines, 2006*. Two complaints were directed towards the process of the meeting of the Election Overseers held on March 9, 2006.

Dr. Gray had conducted investigations into each of the respective matters and referred the four complaints to the Overseers for decision.

Complaint #1: Misrepresentation of Facts on Ms D'Souza's website

Dr. Gray explained that Mr. Bretscher had brought forward three allegations of campaign violations against Ms Coralie D'Souza. Each of the allegations concerned claims made by Ms D'Souza on her website. After investigating the allegations, Dr. Gray recommended that the Election Overseers meet to consider one of the allegations: Mr. Bretscher alleged that a statement on Ms D'Souza's website (in which she claimed that she is the Deputy Vice-President of Student Life on the Students' Administrative Council (SAC), and sat this past year on the University's Clubs/Student Life Commission) was false and concocted. Dr. Gray determined that the Overseers would not be called to consider the other allegations raised in connection with this complaint by Mr. Bretscher. Dr. Gray then led the Overseers briefly through his investigation.

In response to a question concerning the procedure that determined which allegations would be considered by the Committee, Dr. Gray stated that the Chief Returning Officer (CRO), after investigating allegations brought forward, is responsible for recommending which allegations should be considered by the Election Overseers. The decision of the CRO, he noted, could be appealed to the Elections Committee.

Invited to comment on the allegation, Mr. Bretscher asked that the record reflect that he had received documentation concerning the meeting at 9:08 p.m. Friday, March 24. In his opinion, this did not provide him with adequate time to prepare for the meeting. Mr. Bretscher reiterated his allegation and stated that the misrepresentation of facts on the website was, in his view, a *serious* rather than *severe* violation.

Invited to respond, Ms D'Souza accepted responsibility for the inaccurate statement on her website and said that she sincerely regretted the error. The reference to her SAC position was, she explained, a vestige from an earlier version of her website.

Complaint #2: that Ms D'Souza "publicly tainted" Ms Deb's image and "insulted her character" thereby violating the Election Guidelines's provisions on campaigning

Dr. Gray reported that he had conducted an initial investigation into the allegation that Ms D'Souza had made negative comments about Ms Deb in conversations and communications with prospective voters. In particular, Ms Deb alleged that Ms D'Souza had publicly tainted her image by "calling her a liar", referring to elements of her campaign platform as "ridiculous" and saying that she "did not have the caliber to follow through" on her promises.

At the outset, Dr. Gray emphasized that provisions in the *Election Guidelines* were not intended to supercede any University policies, particularly the Statement on Freedom of Speech¹, and should not be so interpreted. Dr. Gray stated that, while he had found no evidence from third parties to substantiate the claims made by Ms Deb, he had recommended that the Election Overseers consider the matter based on the initial claims made by Ms Deb and the responses provided by Ms D'Souza.

Dr. Gray, in introductory remarks, noted the distinction in the *Election Guidelines, 2006* between expectations and rules and suggested that this distinction might be an important one to consider.

Invited to comment, Ms Deb stated that candidates had been given a clear definition of 'fair play' at the All Candidates' Meeting held prior to the start of the campaign period. It was her expectation that all candidates were required to follow what she called the "rules of fair play" as

¹ This policy is available at: <http://www.utoronto.ca/govcncl/pap/policies/frspeech.htm>

explained by the CRO at that meeting. However, on numerous occasions during the course of the campaign, she had been told that Ms D'Souza had been making negative remarks about her and that, in her view, Ms D'Souza's behaviour violated the rules of fair play.

Invited to respond, Ms D'Souza stated that she had commented on the platform of other candidates, not on the candidates themselves. While she acknowledged that she had criticized Ms Deb's campaign platform she denied calling Ms Deb "a liar" or saying that she did not have the caliber to be a governor.

Complaint #3: Deliberate attempt to undermine the democratic process, conflict of interest and, by extension, bias on the part of the Overseers

Complaint #4: Reasonable Apprehension of Bias and Procedural Irregularity

Dr. Gray suggested that the Election Overseers consider complaints #3 and #4 together since they were based on the same set of facts. Complaint #3 was directed against Ms D'Souza, but Dr. Gray – after finding no evidence to substantiate the claim that Ms D'Souza had deliberately sought to undermine the democratic process – had interpreted the complaint as one against the process rather than against an individual. Complaint #4 included an allegation of procedural irregularity but the CRO, after an investigation, decided that the procedural irregularity allegation was based on a misunderstanding and the Elections Overseers would not be asked to consider it. Accordingly, the allegations of reasonable apprehension of bias, part of both complaint #3 and complaint #4, would be considered together.

Dr. Gray explained that the standard legal definition of reasonable apprehension of bias was "a situation where a reasonable person, knowing the facts concerning the member of the tribunal, would suspect that the member may be influenced, albeit unintentionally, by improper considerations to favour one side in the matter he or she is to decide." (*Administrative Law in Canada*, S. Blake.)

The perceived conflict of interest arose from the fact that Mr. Mahadeo Sukhai, a member of the Elections Committee, had been asked by Ms D'Souza to provide a statement of endorsement for her candidacy. He had indicated his willingness to do so, but noted some concerns about appropriate wording, given his membership on the Elections Committee. Ms D'Souza had posted Mr. Sukhai's name on her website as a supporter some time prior to the meeting of the Election Overseers on March 9. At the time of the meeting, Mr. Sukhai was not aware that his name had been posted on her website as a supporter. This fact was not raised during the meeting of the Election Overseers by anyone present.

Quoting from the CRO's investigation report, the following are the facts in chronological order:

1. Sometime before Sunday March 5, Ms D'Souza wrote to all of the student Governors asking for official endorsements in the Governing Council elections with a sentence or two explaining why for her website.
2. Sometime before Sunday March 5, Mr. Sukhai agreed to the request, asking a few questions, but without providing a quote for the website.
3. On Sunday March 5, Ms D'Souza replied to Mr. Sukhai indicating in addition that she would be bringing a complaint to the CRO and potentially to the Elections Overseers the following week.

4. On Sunday March 5, Mr. Sukhai replied to Ms D'Souza indicating that if Ms D'Souza's complaint were to come before a meeting of the Elections Overseers, he would have to participate and, in light of that, he would have to check regarding the endorsement. Mr. Sukhai wrote:
I still feel that I can give you an endorsement, but I'll have to check about how best to word it so that there's no conflict of interest.
5. Sometime between March 5 and March 9, Mr. Sukhai's name appeared on Ms Deb's website under the heading "Supporters/Individual".
6. On March 9, the Elections Overseers met to consider charges against Ms Deb brought by Ms D'Souza.
7. Mr. Sukhai was a member of the Elections Overseers at that meeting.
8. On March 9, Mr. Sukhai's name was removed from Ms D'Souza's website sometime after the hearing.
9. On March 10, Ms D'Souza wrote to Mr. Sukhai explaining that she had put Mr. Sukhai's name on her website but had taken it down that day.
10. On March 10, Ms D'Souza explained in an interview with the CRO that she had put Mr. Sukhai's name on her website interpreting his original agreement as permission.
11. On March 10, Mr. Sukhai informed the CRO that he did not know that his name appeared on Ms D'Souza's website.

Invited to comment, Mr. Bretscher said he was asking the Elections Committee to reconsider its decision of March 9, since Mr. Sukhai was in conflict of interest as a member of the Elections Overseers because he had endorsed Ms D'Souza. He suggested that any conversation between Ms D'Souza and Mr. Sukhai which had taken place before the March 9 meeting of the Overseers raised concerns of actual bias and deliberate collusion. Moreover, in Mr. Bretscher's opinion, Mr. Sukhai had invoked his experience as a student leader to explain the operation of student governments, and had provided, intentionally or otherwise, misinformation to the Committee. Mr. Bretscher was seeking a statement from the Committee that would describe appropriate behaviour for all governors in the elections process, the invalidation of the March 9 decision of the Overseers and a new meeting of the Overseers to reconsider the March 9 matters.

Invited to comment, Ms Deb stated that she had received the written report of the meeting at 11:50 pm on March 9. She had been informed by others of the posting on the Repository of Student Information (ROSI) website, and believed that the posting influenced voters on March 10. She asked that the Elections Committee revisit the charges that had been considered at the March 9 meeting.

Invited to comment, Ms D'Souza acknowledged that she had asked all student governors for statements of endorsement for her candidacy. Mr. Sukhai had not been actively involved in her campaign, and she had not discussed with him the allegations that she had brought forward to the Committee. Throughout this process, Mr. Sukhai did not know his name was on her website as a supporter.

The Chair thanked the complainants for bringing forward the issues for consideration. The non-members withdrew from the meeting, and the Committee moved *in camera* to deliberate, with the CRO and Secretary remaining.

Decisions

The Committee was unanimous in reaching the following decisions.

Complaint #1: Misrepresentation of Facts on Ms D'Souza's website

The Overseers determined that Ms D'Souza had violated the *Election Guidelines, 2006* when she misrepresented information about herself and the positions she had held in student government. The Overseers also determined that this misrepresentation had been unintentional. The Overseers note that Ms D'Souza herself had acknowledged that incorrect information had appeared on her website.

In the opinion of the Committee, this misrepresentation of fact constitutes a *serious* violation of the *Election Guidelines, 2006*.² However, since the violation did not materially affect the outcome of the election, no additional sanction is imposed.

² In principle, a *Severe* violation is one characterized by a deliberate and substantial effort to undermine the elections process; in contrast, a *Serious* violation is one which contravenes the spirit and letter of these *Guidelines* in an attempt to gain an unfair advantage in the elections process but does not itself constitute a substantial effort to undermine that process. The Elections Overseers have the sole authority to determine the category into which a particular violation falls, guided by the following observations, and acknowledging that the degree of a violation may influence its classification:

- (i) *Serious* violations might include, but are not limited to:
- violations of the regulations concerning posters and information technology outlined in Appendix B of these *Guidelines*;
 - including, in the course of a campaign, material explicitly forbidden by these *Guidelines* (e.g. University Crest);
 - violations of any restrictions imposed by University faculties, departments, or administrative services;
 - inappropriate use of property, including but not limited to chalk messages on sidewalks, adhesive stickers/signs affixed to furniture and/or equipment;
 - unauthorized solicitation of votes, including but not limited to speaking in class without the prior permission of the instructor;
 - the use in a campaign of any service or tangible benefit conferred on a candidate by virtue of his/her holding any position in any organization on campus. This includes, but is not limited to, office supplies, equipment, advertising space, secretarial service and funding;
 - unauthorized use of University resources, including but not limited to printing, copying, office supplies, equipment and secretarial service;
 - deliberate misrepresentation of facts;
 - spending marginally over the maximum spending limit as set by the *Election Guidelines*;
 - making frivolous and/or vexatious campaign violation allegations.
- (ii) *Severe* violations might include, but are not limited to:
- spending grossly over the maximum spending limit as set by the *Election Guidelines*;
 - intentionally misrepresenting campaign expenditures;
 - attempting to interfere in the election process as regulated by these *Guidelines*;
 - soliciting Student Information System (SIS) and/or Personal Identity Number (PIN) numbers.

Complaint #2: that Ms D'Souza "publicly tainted" Ms Deb's image and "insulted her character" thereby violating the *Election Guidelines's* provisions on campaigning

The Committee determined that no violation of the *Election Guidelines, 2006* had occurred. First, the Committee found no conclusive evidence that Ms D'Souza had indeed conducted herself in a manner contrary to the expectations of fair play as described in Chapter VI (b) (ii) of the *Election Guidelines, 2006*. Second, the Committee does not believe that these expectations, however strongly intended as *guidelines* for the conduct of candidates, can be interpreted so broadly as to eliminate any negative comments on opponents or their platforms. Such commentary, even if at times regrettable and contrary to expectations, is often part of the democratic process. In this regard, the Overseers call attention to the University's *Statement on Freedom of Speech* which, in the Overseers' view, extends to the conduct of elections as well as to other aspects of University life:

...all members of the University must have as a prerequisite freedom of speech and expression, which means the right to examine, question, investigate, speculate, and comment on any issue without reference to prescribed doctrine, as well as the right to criticize the University and society at large.

Complaint #3: Deliberate attempt to undermine the democratic process, conflict of interest and, by extension, bias on the part of the Overseers, or the reasonable apprehension of bias

Complaint #4: Reasonable Apprehension of Bias and Procedural Irregularity

The Committee regrets that such serious allegations as these were not raised before the meeting of the Overseers had taken place on March 9. Although the *Election Guidelines, 2006* only prohibits a member of the Elections Committee from hearing a matter of contention when the member is a candidate in the constituency in which an allegation had been filed, the Overseers could have considered the matter and taken appropriate action if the allegations had been raised before the March 9 meeting.

Nevertheless, the Committee wishes to emphasize the importance of its independence and the perception of its independence in matters pertaining to Governing Council elections and its role as Elections Overseers. The Committee agrees that, in the matter under consideration, the perception of the Overseers as independent and neutral has been reasonably challenged and the charge of reasonable apprehension of bias, had it been raised before the March 9 meeting, would likely have been substantiated. The Committee notes that Mr. Sukhai was clearly aware of the possibility of a conflict of interest, that he raised the concern in his correspondence with Ms D'Souza and undertook to address the conflict. At the same time, the Committee believes that Mr. Sukhai, though not technically in violation of the Guidelines, ought to have recused himself before the March 9 meeting.

Accordingly, the Overseers invalidate their March 9, 2006, decision contained in Report #43 of the Elections Committee and the sanctions it imposed. The Committee is prepared to reconvene at the call of the CRO as Elections Overseers at the earliest possible date to reconsider the allegations and charges brought forward by the CRO to the March 9, 2006, meeting.

The Overseers note that the sanctions imposed as a result of the March 9, 2006, meeting may reasonably have had an impact on the outcome of the election (voting in which ended on March 10, 2006), and the Overseers gave some consideration to invalidating the election as a result. However, in the present case, the Elections Overseers do not consider there to have been significant enough potential prejudice to warrant redoing the election.

In addition, the Overseers recommend that the *Election Guidelines, 2007*, include a provision that a member of the Elections Committee who is standing as a candidate for election, involved in an election campaign or who has endorsed a candidate for election may not act as an Election Overseer.

Other Business

On motion duly made and seconded

YOUR COMMITTEE RECOMMENDS

THAT the Chief Returning Officer be directed to re-open nominations once more this Spring for those seats on the Academic Board for which no nominations have been received after two re-openings of the nomination period. If no nominations are received, nominations may be re-opened in September 2006. If no nominations are received at that time, the seats will remain vacant until the nomination period in January 2007.

March 30, 2006